



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

SEP 23 2004

REPLY TO THE ATTENTION OF
(AE-17J)

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Donald P. Chartier, Vice President
Nelson Paint Company
P.O. Box 2040
One Nelson Drive
Kingsford, Michigan 49802-2040

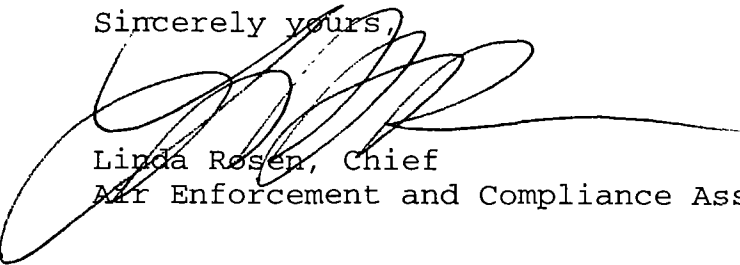
Dear Mr. Chartier:

Enclosed is a file stamped Consent Agreement and Final Order (CAFO) which resolves violations at Nelson's Kingsford, Michigan facility, CAA Docket No. ~~CAA-05-2004 0049~~. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on ~~SEP 28 2004~~.

Pursuant to paragraph 34 of the CAFO, Nelson must pay the civil penalty within 30 days of ~~SEP 28 2004~~. Your check must display the case docket number, ~~CAA-05-2004 0049~~ and the billing document number, ~~050364802~~.

Please direct any questions regarding this case to Mony Chabria, Associate Regional Counsel, (312) 886-6842.

Sincerely yours,



Linda Rosen, Chief
Air Enforcement and Compliance Assurance Section (MI/WI)

Enclosure

cc: Rebecca Vahle (w/enclosure)

1. 1. 1.

1. 1. 1.

1.

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:

Nelson Paint Company
Kingsford, Michigan

Respondent.

) Docket No. **CAA-95-2004 00-49**
)
) **Consent Agreement and Final**
) **Order**
)
)
)

US ENVIRONMENTAL
PROTECTION AGENCY
REGION 5

04 SEP 28 AM 1:53

RECEIVED
REGIONAL HEARING
CLERK

CONSENT AGREEMENT AND FINAL ORDER

I. JURISDICTIONAL AUTHORITY

1. This is a civil administrative action commenced and concluded simultaneously pursuant to Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b), and 22.18(b) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination, or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.1(a)(2), 22.13(b), and 22.18(b).

2. Complainant, the Director of the Air and Radiation Division, United States Environmental Protection Agency, Region 5 (U.S. EPA), brings this administrative action seeking a civil penalty under Section 113(d) of the Act, 42 U.S.C. § 7413(d).

3. The Respondent is Nelson Paint Company (Nelson or Respondent), a corporation doing business in Michigan.

II. STATUTORY AND REGULATORY BACKGROUND

4. Under Section 183(e) of the Act, 42 U.S.C. § 7511b(e), the Administrator of U.S. EPA promulgated regulations establishing requirements regarding the manufacture of certain consumer or commercial products, the use of which may result in the release of volatile organic compounds (VOCs).

5. Pursuant to Section 183(e) of the Act, 42 U.S.C. § 7511b(e), on September 11, 1998, U.S. EPA promulgated National VOC Emission Standards for Architectural Coatings at 40 C.F.R. Part 59, Subpart D (Architectural Coatings Standards).

6. The Architectural Coatings Standards apply to each "architectural coating," as that term is defined at 40 C.F.R. § 59.401, manufactured on or after September 13, 1999 for sale or distribution in the United States.

7. The Architectural Coatings Standards, at 40 C.F.R. § 59.401, define "manufacturer" as a person that produces, packages, or repackages architectural coatings for sale or distribution in the United States.

8. The Architectural Coatings Standards, at 40 C.F.R. § 59.408(b), require each manufacturer and importer of any architectural coating subject to Subpart D to submit an initial notification report no later than September 13, 1999 or within 180 days after the date that the first architectural coating is manufactured or imported, whichever is later.

9. The Architectural Coatings Standards, at 40 C.F.R. § 59.405(a)(2), require each manufacturer and importer of any architectural coating subject to Subpart D to provide on the label or lid of the container in which they sell or distribute the coating, a statement of the manufacturer's recommendation regarding thinning of the coating.

10. The Architectural Coatings Standards, at 40 C.F.R. § 59.402(a), require each manufacturer and importer of any architectural coating subject to Subpart D to ensure that the VOC content of the coating does not exceed the applicable limit in Table 1 of Subpart D.

11. The Administrator of U.S. EPA may assess a civil penalty of up to \$27,500 per day for each violation, with a maximum of \$220,000, for violations of the Architectural Coatings Standards that occurred between January 31, 1997 and March 15, 2004, and may assess a civil penalty of up to \$32,500 per day for each violation, with a maximum of \$270,000, for violations that occurred on and after March 15, 2004, under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19, as amended at 69 Fed. Reg. 7121 (February 13, 2004).

III. FACTUAL ALLEGATIONS

12. Nelson owns and operates a coating manufacturing facility at One Nelson Drive, Kingsford, Michigan.

13. Nelson manufactures and distributes at least 77 coatings, including, but not limited to, those listed in Table A. These coatings are recommended for field application to stationary structures and their appurtenances.

Table A.

Coating	VOC Content (g/L)	Manufactured in:		
		1999/2000	2001	2002
E&I 22 4-DR	436		X	
E&I 22 5	584	X		
E&I 10 14	492	X		
E&I 10 19	487	X	X	
E&I 2 6	499	X	X	X
E&I 3 15	475	X	X	X
E&I 4 4	481	X		
E&I 5 15	485	X	X	
E&I 5 2	483	X	X	X
E&I 6 44	487	X	X	X
Q 1 3	482	X	X	
Q 1 4	485	X	X	
Q 1 6	451	X	X	X
E&I 2 3	539		X	X
Q 1 1	469		X	X
E&I 17 21	558	X	X	X
E&I 17 24	558	X	X	X
E&I 17 45	554	X	X	X
E&I 17 23	552			X
E&I 20 19	494	X	X	
E&I 20 34	555	X	X	X
SG 1 11	394	X		

P 4 3	416	X	X	X
PF 1 2	446	X	X	
PF 1 8	452	X	X	X

14. In its November 3, 2003 response to U.S. EPA's information request, Nelson provided the data in Table A.

15. Since 1960, Nelson has manufactured and distributed "architectural coatings," as defined in 40 C.F.R. § 59.401.

16. Nelson did not submit an initial notification report until September 13, 2000.

17. The labels of E&I 20 34 and SG 1 11 did not portray Nelson's recommendation on thinning until April 2004.

18. The VOC content of each coating listed in Table A exceeded the applicable VOC content limit.

19. Nelson never paid exceedance fees for the coatings listed in Table A.

20. Until February 26, 2004, Nelson had never designated a limited quantity of coatings to be exempt from the VOC content limits in a manner consistent with the tonnage exemption provisions at 40 C.F.R. § 59.404.

21. On March 29, 2004, U.S. EPA issued a Finding of Violation to Nelson.

IV. VIOLATIONS

22. As set forth above, Nelson failed to submit an initial notification report by September 13, 1999, constituting a

violation of 40 C.F.R. § 59.408(b) and Sections 183 and 111(e) of the Act, 42 U.S.C. §§ 7511b and 7411(e).

23. As set forth above, Nelson failed to provide a statement of its recommendation on thinning on its containers of architectural coatings, constituting a violation of 40 C.F.R. § 59.405(a)(2) and Sections 183 and 111(e) of the Act, 42 U.S.C. §§ 7511b and 7411(e).

24. As set forth above, Nelson exceeded the VOC content limits for the coatings listed in Table A without paying exceedance fees or submitting tonnage exemption reports, constituting a violation of 40 C.F.R. § 59.402(a) and Sections 183 and 111(e) of the Act, 42 U.S.C. §§ 7511b and 7411(e).

V. STIPULATIONS

25. Nelson admits the jurisdictional allegations and neither admits nor denies the factual allegations described herein.

26. Nelson consents to the issuance of this CAFO and the assessment of a civil penalty, as outlined in Section VI of this CAFO.

27. Nelson consents to all of the terms and conditions in this CAFO.

28. Nelson waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c).

29. Nelson waives its right to contest the allegations in this CAFO, and waives its right to appeal under Section 113(d) of the Act, 42 U.S.C. § 7413(d).

30. Nelson certifies that it is complying fully with the Architectural Coatings Standards at its coating manufacturing facility in Kingsford, Michigan.

31. Nelson and U.S. EPA agree that settling this action without further litigation, upon the terms of this CAFO, is in the public interest.

VI. CIVIL PENALTY

32. Pursuant to Section 113(e) of the Act, 42 U.S.C. § 7413(e), in determining the amount of the penalty assessed, U.S. EPA took into account (in addition to such other factors as justice may require), the size of Nelson's business, the economic impact of the penalty on Nelson's business, Nelson's full compliance history and good faith efforts to comply, the duration of the violations, payments by Nelson of penalties previously assessed for the same violations, the economic benefit of noncompliance, and the seriousness of the violations.

33. Based on an analysis of the above factors, including Nelson's cooperation, prompt return to compliance, and agreement with the U.S. EPA to reduce the total VOC content of its architectural coatings by five percent within 18 months of the effective date of this CAFO, U.S. EPA has determined that an

appropriate civil penalty to settle this action is \$28,600 (Twenty-Eight Thousand Six Hundred Dollars).

34. Nelson must pay the \$28,600 civil penalty by cashier's or certified check payable to the "Treasurer, United States of America," in accordance with paragraphs 35 and 36 below, within 30 days of the effective date of this CAFO.

35. Nelson must send the check to:

U.S. Environmental Protection Agency
Region 5
P.O. Box 70753
Chicago, Illinois 60673

36. A transmittal letter, stating Respondent's name, complete address, the case docket number, and the billing document number must accompany the payment. Respondent must write the case docket number and the billing document number on the face of the check. Respondent must send copies of the check and transmittal letter to:

Attn: Regional Hearing Clerk, (E-19J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3590

Attn: Compliance Tracker, (AE-17J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3590

Mony Chabria, (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3509

1
5
2
1

1
1
1

1

37. This civil penalty is not deductible for federal tax purposes.

38. If Nelson does not pay timely the civil penalty, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States' enforcement expenses for the collection action under Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

39. Interest will accrue on any overdue amount from the date payment was due at a rate established under 31 U.S.C. § 3717. Nelson will pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. Nelson will pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue according to Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter.

VII. AGREEMENT TO REFORMULATE

40. As part of the settlement of the violations alleged in Section IV of this CAFO, Nelson agrees to reduce the total VOC content of its architectural coatings by five percent (based upon 2003 production levels). Nelson agrees to accomplish this

reduction in VOC content no later than 18 months from the effective date of this CAFO.

41. At the completion of the 18 month period, Nelson must notify U.S. EPA as to whether Nelson has accomplished the VOC content reduction. If Nelson fails to accomplish this VOC content reduction within 18 months, Nelson will pay an additional civil penalty of \$7,500. Payment of this additional civil penalty will be made in the manner indicated in Paragraphs 34-36 above.

VIII. GENERAL PROVISIONS

42. This CAFO constitutes a settlement by U.S. EPA of all claims for civil penalties pursuant to Sections 111(e) and 113 of the Act, 42 U.S.C. §§ 7411(e) and 7413, for the violations alleged in Section IV of this CAFO. Nothing in this CAFO is intended to, nor shall be construed to, operate in any way to resolve any criminal liability of Nelson arising from the violations alleged in this CAFO or liability related to other violations of the Act. Compliance with this CAFO shall not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by U.S. EPA, and it is the responsibility of Nelson to comply with such laws and regulations.

43. Nothing in this CAFO restricts U.S. EPA's authority to seek Nelson's compliance with the Act and other applicable laws and regulations.

44. This CAFO does not affect Nelson's responsibility to comply with the Act and other applicable federal, state, and local laws and regulations.

45. This CAFO constitutes an "enforcement response" as that term is used in "U.S. EPA's Clean Air Act Stationary Source Civil Penalty Policy" to determine Nelson's "full compliance history" under Section 113(e) of the Act, 42 U.S.C. § 7413(e).

46. The terms of this CAFO bind Nelson, its officers, directors, servants, employees, agents, successors, and assigns, including, but not limited to, subsequent purchasers.

47. Each undersigned representative of the parties to this CAFO certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this CAFO and to execute and legally bind that party to it.

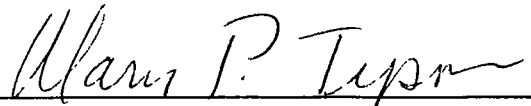

48. Each party shall bear its own costs and attorneys' fees in connection with the action resolved by this CAFO.

49. This CAFO shall become effective on the date it is filed with the Regional Hearing Clerk, Region 5.

50. This CAFO constitutes the entire agreement between the parties.


**U.S. Environmental Protection Agency,
Complainant**

Date: 9/23/04

By: 
 Stephen Rothblatt, Director
Air and Radiation Division
U.S. Environmental Protection
Agency, Region 5 (A-18J)

**Nelson Paint Company,
Respondent**

Date: 9-14-04

By: 
Name: Donald P. Charlier, Jr.
Title: VICE-PRESIDENT

CAA-05- 2004 0049

CONSENT AGREEMENT AND FINAL ORDER

Nelson Paint Company, Kingsford, Michigan

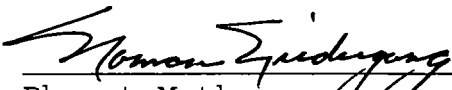
Docket No.

CAA-05- 2004 0049

Final Order

It is ordered as agreed to by the parties and as stated in the consent agreement, effective immediately upon filing of this CAFO with the Regional Hearing Clerk.

Dated: 9/24/04

for 
Bharat Mathur
Acting Regional Administrator
U.S. Environmental Protection
Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

4

1000000

2

1

1

1

1

1

1

1

1

1

1

1

1

1

CERTIFICATE OF SERVICE

I, Shanee Rucker, certify that I hand delivered the original of the Consent Agreement and Final Order, docket number CAA-05-2004 00-49 to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, and that I mailed correct copies by first-class, postage prepaid, certified mail, return receipt requested, to Nelson and Nelson's Counsel by placing them in the custody of the United States Postal Service addressed as follows:

Donald P. Chartier, Vice President
Nelson Paint Company
P.O. Box 2040
One Nelson Drive
Kingsford, Michigan 49802-2040

Rebecca J. Vahle
Legal Counsel for Nelson Paint Company
Michael Best & Friedrich, LLP
One South Pinckney Street
P.O. Box 1806
Madison, Wisconsin 53701-1806

US ENVIRONMENTAL
PROTECTION AGENCY
REGION V

04 SEP 28 AM 11:53

RECEIVED
REGIONAL HEARING
CLERK

on the 28th day of September, 2004.



Shanee Rucker
AECAS (MI/WI)

CERTIFIED MAIL RECEIPT NUMBER: 7001 0320 0006 0295 3369

1992